

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

DONATO APONTE NAVEDO, et al.  
Plaintiffs  
v.  
NALCO CHEMICAL, INC., et al.  
Defendants

CIVIL No. 09-01232-JA

TITLE VII AGE & GENDER DISCRIMINATION, ADA,  
NATIONAL ORIGIN, TORTS  
TRIAL BY JURY

**MOTION FOR LEAVE TO SERVE SUBPOENA AD TESTIFICANDUM**

Plaintiffs, Donato Aponte-Navedo and Belkis Isabel Santiago-Martínez, by and through their undersigned counsel, hereby move this Honorable Court as follows:

1. Plaintiffs filed the present case of employment discrimination against, *inter alia*, employer Nalco Chemical Company (Nalco) and, supervisor Ashok Paul Duggal (Duggal), on March 10th, 2009. See: Doc.# 1.
2. As affirmative defenses, Nalco and Duggal alleged that Plaintiff Aponte was discharged for cause due to job performance issues. See: Doc.# 15; Doc.# 27.
3. Specifically, Nalco justified plaintiff Aponte's termination from employment, *inter alia*, pointing out that the alleged performance issues caused Nalco loss of business from a major client, Amgen Manufacturing, Limited, Puerto Rico (Amgen).
4. Nalco has filed in the instant case, in support of the above defenses, purported communications between individuals involved in

the decision to terminate plaintiff Aponte, which reference alleged complaints logged by Amgen, against Aponte, based on his performance. See: Doc.# 15-2; Doc.# 53-6.

5. Nalco has failed to disclose or produce, however, any direct communication issued by Amgen or any of its authorized agents, which directly addresses Aponte's performance in delivering professional services on behalf of Nalco.

6. Accordingly, Plaintiffs requested leave of court to issue and serve a subpoena upon Amgen, requesting documents relevant to the affirmative defenses set forth by Nalco, above. See: Doc.# 53, at ¶22. Plaintiffs' request was subsequently granted. See: Doc.# 57.

7. Plaintiffs served the above subpoena on June 1<sup>st</sup>, 2010, and are following up with Amgen for their full compliance. See: Exhibit 1.

8. Regardless of what the contents of Amgen response might end up being, Plaintiffs plan to use Amgen personnel to authenticate at trial the contents, as well as the search and retrieval methodology, technique, or protocol followed by Amgen to produce any responsive documents. Trial is scheduled for August 9<sup>th</sup>, 2010.

9. Based on information and belief, Plaintiffs submit to the Court that the competent witnesses to authenticate the production at issue are the following individuals: Mr. Justo Moreno, Executive Director Information Systems, and Mr. Emilio Rivera, Vice President Puerto

Rico Operations, both from Amgen Manufacturing, Limited Puerto Rico, in Juncos, Puerto Rico.

WHEREBY, for all of the above, Plaintiffs pray that this Honorable Court:

GRANT Plaintiffs leave to issue subpoenas *ad testificandum* to be served on the named Amgen employees, to appear and testify at trial for the present case, on August 9<sup>th</sup>, 2010.

Respectfully submitted in New York, New York, this 15<sup>th</sup> day of July, 2010.

**S/William Meléndez-Menéndez**

William Meléndez-Menéndez

USDC-PR No. 226902

Cuadros & Cuadros  
410 Park Ave. Suite # 1223, New York, New York 10022  
We.Melendez@e-Lex.us  
(718)725-7387

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 15<sup>th</sup>, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James W. McCartney and Arturo Diaz-Angueira, CANCIO, NADAL, RIVERA & DÍAZ, P.S.C.

In New York, New York, this 15<sup>th</sup> day of July, 2010.

**S/William Meléndez-Menéndez**

William Meléndez-Menéndez

USDC-PR No. 226902

Cuadros & Cuadros

410 Park Ave. Suite # 1223, New York, New York 10022

We.Melendez@e-Lex.us

(718)725-7387